

January 15, 2009

Tukwila Planning Commission
City of Tukwila
Department of Community Development
6300 Southcenter Boulevard, #100
Tukwila, WA 98188

HAND DELIVERED WITH COPIES

Re: January 15, 2009 – Comments on Draft Shoreline Master Program

Dear Planning Commission:

Curran Law Firm represents the Strander family, owners of several parcels on the South side of 48th Ave. South between Interurban Ave. South and the Duwamish River. The Stranders have a long history with the City of Tukwila and have owned property in the area for more than ninety years.

Strander Parcels

The Strander parcels (see attached **Exhibit A**). are located at River Mile 9 in the area designated as Urban Conservancy Environment under the Draft Shoreline Master Program ("SMP"). Only one of the Strander parcels will be subject to the SMP, including the 100 foot buffer and 200 foot environment. The Strander parcel closest to the Duwamish River is not behind a levee.

Two Strander parcels in particular will be affected by the SMP: 12840 and 12900 48th Ave. South, parcel numbers 0004800019 ("parcel 19") and 0004800018 ("parcel 18") respectively. Parcels 18 and 19 are leased to Penske Truck Leasing Co. Parcel 18 is developed with a 6,000 square foot maintenance facility. Parcel 19 is used as a storage yard for the fleet of rental trucks. There are no improvements to parcel 19 other than it being paved for parking of the Penske fleet, and fenced. There are no structures on parcel 19.

Parcel 19 is the closest of the Strander parcels to the river but does not abut the river. The Stranders sold 30 feet of parcel 19 that abutted the river to King County in 1973 for fair market value to become part of the Green River Trail. Most of parcel 19 lies within the 200 foot Urban Conservancy Environment described in the SMP; the northern boundary of parcel 19 extending approximately 260 feet landward from the trail and the southern boundary extending landward from the trail approximately 200 feet. Between the northern and southern boundaries, parcel 19 is approximately 200 feet deep.

Strander Concerns

Although some of our concern about parking was mitigated by the proposed revision to the SMP to remove the requirement for parking on the landward side of development, we are still concerned with issues of nonconforming use regarding parking, development standards, buffers, public participation and the absence of compensation for a private land owner being required to convey a benefit to the general public. Staff of the Department of Community Development ("Staff") has addressed some of these issues and made some substantial improvements, but much still needs to be done to help avoid legal challenges in the future.

Nonconforming Use

Under the SMP, the current use of parcel 19 as a storage yard for parking will not be permitted on one-third of the parcel since off street parking is not allowed within the 100 foot Urban Conservancy Environment Buffer. SMP, Section 8.3(A)(1). Such parking could only continue as a nonconforming use, subject to Section 14.5A of the SMP for nonconforming uses.

The most significant problem with a nonconforming use is the negative impact it has on property value. When property values are reduced, owners have less collateral for loans for maintenance and improvements, and it is more difficult to sell and insure the property. Nonconforming use can also be lost if the use stops for 6 months (SMP Section 14.5A3). Thus, if the Stranders lose their current tenant and are not able to replace the tenant within 6 months, the use of one-third of parcel 19 for parking will be prohibited. Not only would the current use for parking be prohibited, but virtually all productive commercial use of that portion of the property would be prohibited since no commercial use of property is permitted within the Urban Conservancy Environment Buffer unless it is dependent on the water (SMP Section 8.3A1).

Rather than creating nonconforming uses, the SMP should permit existing uses and accomplish the City's required protection and improvement of the shoreline environment by imposing the development standards on substantial development as it occurs. We understand other jurisdictions, like Bellevue and Redmond, are using this approach. Although the requirement for parking on the landward side of shoreline development has now been removed from Section 9.9B of the SMP (a significant revision that we appreciate), existing parking should be added as a permitted use under Section 8.3A1 of the SMP. This will prevent properties along the river's edge from becoming nonconforming, and thus potentially less productive and unsightly due to their inability to generate income for their owners.

If nonconforming use must be created, it should at least be minimized by applying the same standard as is used for nonconforming structures when the property is vacant. Staff's proposed revisions to the SMP cause a nonconforming use to be lost if it stops for more than six consecutive months. When that use is based on a tenant's use of the property, it is not difficult to imagine that a rental property with a nonconforming use could be vacant for more than 6 months and thus lose its status as a nonconforming use. The SMP should use the same standard for nonconforming uses that is being proposed for nonconforming structures in Section 14.5B4 of the SMP, i.e., allow cessation of use for up to 24 months, with a possible extension of an additional 12 months. See attached **Exhibit B**. There is no basis for a different time standard for nonconforming uses and structures. Why should nonconforming use be lost if it ceases for 6 months, while a nonconforming structure can remain if vacant for up to 36 months? If parking can only exist as a nonconforming use, that use should not be lost just because a property owner loses a tenant for more than 6 months.

Development Standards

Staff has proposed replacing a list of triggers for when to apply the development standards of the SMP with a simpler, but broader, trigger of any development. Staff is currently proposing that Section 9.1 of the SMP be revised to provide as follows:

The development standards of this chapter apply to work that meets the definition of development whether or not a shoreline substantial development permit is required.

Nonconforming use, structures, parking lots and landscape areas will be governed by the standards in Section 14.5, Nonconforming Development.

Staff's proposal creates too broad a trigger; does not adequately address the different development standards for nonconforming uses, structures, parking lots or landscape areas; and does not adequately address a potential impropriety in how the standards could be applied.

Use Substantial Development Instead of Development as a Trigger

Staff explained its proposed revision to Section 9.1 by stating that it will "rely on the definition of development as found in the Shoreline Management Act" ("SMA"). See Attachment C-1 to the Comment Matrix ("Matrix"). The definition of development in the SMA is already included on page 9 of the SMP within the definitions in Section 3 of the SMP, and is unreasonably broad:

Development, shoreline: means a use consisting of the construction or *exterior alteration of structures*; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; construction of bulkheads; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any stage of water level. (emphasis added)

This definition of development could literally include any exterior alteration of a structure. Thus, something as simple as exterior repainting could trigger the development standards, even if there is no risk of harm to the environment or any public concern. Repainting could allow the City to order the Stranders to install screening (SMP Section 9.9(C)) and water treatment features (SMP Section 9.9(F)), and to remove invasive vegetation and replace it with native vegetation (SMP Sections 9.10(C) and (D)), none of which mitigates any impact on the environment caused by the repainting.

Instead of using the SMA definition of development, it would be more reasonable to limit the applicability of the development standards to those occasions of substantial development as defined by the SMA and Section 3 of the SMP. See attached **Exhibit C**. This would at least provide accepted minimum dollar amounts before the development standards would apply, and exclude normal maintenance, emergency construction and other reasonable enumerated exceptions from the triggers of applicability. We propose that the first part of Section 9.1 be revised to provide:

The development standards of this chapter apply to *substantial development*.

Likewise we propose that all references to development, new development and redevelopment be revised to simply refer to substantial development where appropriate.

Distinguish Development on Nonconforming Parcels

Section 9.1 of the SMP does not sufficiently differentiate how development may occur on nonconforming properties without triggering application of the development standards. Section 9.1 of the SMP simply provides that:

Nonconforming uses, structures, parking lots and landscape areas will be governed by the standards in Section 14.5, Nonconforming Development.

We do not believe this is a clear enough exception for nonconforming properties from the description of when development standards will normally apply, as proposed by Staff for the first part of Section 9.1 of the SMP, which provides:

The development standards of this chapter apply to work that meets the definition of development whether or not a shoreline substantial development permit is required.

Now that Staff is proposing a significant revision of Section 14.5 of the SMP for Nonconforming Development, which includes many exceptions to the applicability of the development standards, Section 9.1 of the SMP should be further revised to better clarify the exception for nonconforming uses, structures, parking lots and landscape areas:

Except as provided below for nonconforming uses, structures, parking lots and landscape areas, the development standards of this chapter apply to substantial development.

Nonconforming uses, structures, parking lots and landscape areas will be governed by the standards in Section 14.5, Nonconforming Development.

Adjoining Parcels

There is nothing in the SMP that addresses a situation like the Stranders', where one parcel located outside the Shoreline Jurisdiction is used in conjunction with another parcel located within the Shoreline Jurisdiction. Parcel 18 is located outside the Shoreline Jurisdiction and as it is currently being used is dependent upon the parking on parcel 19, which is located within the Shoreline Jurisdiction. It is likely that there are other such situations along the river. Since the upland jurisdiction of the SMP (excluding wetlands) is expressly limited in Section 1.2B of the SMP to the "area which extends from the ordinary high water mark landward for 200 feet" (see attached **Exhibit D**), development standards should not be imposed on parcel 19 because of alterations to parcel 18 because parcel 18 is more than 200 feet landward of the ordinary high water mark. However, we have received mixed messages from Staff.

At the October 1, 2008 Open House, Staff advised us that parcels under common control are subject to the same use restrictions governing the parcel within the Shoreline Jurisdiction. At the January 7, 2009 Open House, Staff said that alterations to the structures on parcel 18 should not trigger development standards on parcel 19 under the SMP. This potential problem of interpretation can be corrected by expressly limiting the application of the development standards to only those parcels within the Shoreline Jurisdiction. Accordingly, we propose Section 9.1 of the SMP be further revised to include the following:

When a parcel located within the Shoreline Jurisdiction (a "jurisdictional parcel") is used in conjunction with a separate adjoining parcel that lies entirely outside the Shoreline Jurisdiction (a "nonjurisdictional parcel"), development of the nonjurisdictional parcel shall not cause the nonjurisdictional parcel to be subject to this SMP, nor shall development of the nonjurisdictional parcel cause any development standards of this SMP to be required to be implemented on the jurisdictional parcel.

Thus, all three of our concerns about the development standards can be addressed by revising Section 9.1 of the SMP to provide as follows:

Except as provided below for nonconforming uses, structures, parking lots and landscape areas, the development standards of this chapter apply to substantial development.

Nonconforming uses, structures, parking lots and landscape areas will be governed by the standards in Section 14.5, Nonconforming Development.

When a parcel located within the Shoreline Jurisdiction (a "jurisdictional parcel") is used in conjunction with a separate adjoining parcel that lies entirely outside the Shoreline Jurisdiction (a "nonjurisdictional parcel"), development of the nonjurisdictional parcel shall not cause the nonjurisdictional parcel to be subject to this SMP, nor shall development of the nonjurisdictional parcel cause any development standards of this SMP to be required to be implemented on the jurisdictional parcel.

See attached **Exhibit E**. A similar clarification could also be added as a new Section 14.5F to remove any ambiguity as to application of the nonconforming status provisions to development of nonjurisdictional parcels that are used in conjunction with nonconforming parcels:

F. Adjoining Parcels Outside the Shoreline Jurisdiction

When a parcel located within the Shoreline Jurisdiction has a nonconforming use, structure, parking lot or landscape area as defined in this SMP (a "nonconforming parcel") and that nonconforming parcel is used in conjunction with a separate adjoining parcel that lies entirely outside the Shoreline Jurisdiction (a "nonjurisdictional parcel"), activity on the nonjurisdictional parcel shall not be used to determine compliance with this Section 14.5 of this SMP by the nonconforming parcel.

See attached **Exhibit F**.

Buffers

The Stranders still question the need for a uniform 100 foot buffer. We do not find any scientific explanation for its requirement in the SMP, Staff's comments or Staff's proposed revisions. The scientific basis for the need for this critical requirement should be included in the SMP. In Attachment B to the Matrix, Staff's explanation for uniform buffers included protection of new structures from bank erosion, because site by site determination would be "difficult to administer," and because buffer averaging "might not provide the minimum functions needed to protect the shoreline." See attached **Exhibit G**. If there is going to be a taking of private

property, even for the possibility of protecting private property from erosion, there should be a better reason than the alternative being difficult and uncertain.

River Bank Slope

The Stranders also still question the need for a uniform 2.5:1 reslope of the river bank. The need for this change in the bank of the river is not adequately explained in the SMP, Staff's comments or Staff's proposed revisions. Explanation of the scientific basis for the need for this critical factor should be included in the SMP. Based on one drawing prepared for Staff by ESA Adolfson, the impact of re-sloping the river bank will be even more detrimental to owners like the Stranders than the nonconforming use situation. See attached **Exhibit H**. At least with a nonconforming use, there is some private commercial use to be made of the property. According to the drawing, by the time the bank is re-sloped and public access provided, almost the entire 100 foot buffer will be used for public purposes; all with no compensation to private property owners such as the Stranders.

Public Participation

We thank the Commission and Department Staff for giving us additional opportunity to express our concerns about the SMP. We hope to see many significant further revisions to the SMP to express the many concerns that the property owners still have. Serious legal challenges continue to be raised as likely scenarios if the SMP is not further revised. Nobody wants to see such challenges raised in court, and now continues to be the best time to address these concerns while the property owners most affected remain willing to work with the Commission and Staff.

Economic Impact

Despite Staff's recognition that taxpaying citizens of the City of Tukwila were concerned about the economic impact of the SMP, it clearly appears from Staff's comments that no analysis of the economic impact was made. This may be contrary to portions of the economic development element of the City's Comprehensive Plan wherein the following are provided:

One of the general philosophies is to encourage the retention and growth of existing local firms. Page 31 of the Plan.

An activity emphasis includes business development for existing businesses to expand. Page 32 of the Plan.

One of the issues is to continue the strength and growth of the tax base. Page 33 of the Plan.

The goal is to continue enhancement of the community's economic wellbeing. Page 34 of the Plan.

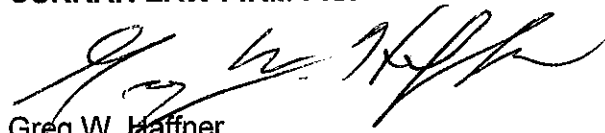
One of the policies adopted to accomplish that goal is to monitor City actions and impacts on the local economy and review economic development incentives. Page 34 of the Plan.

See attached **Exhibit I**.

It would seem that economic analysis of the impact of the SMP on one of the City's most significant economic regions would be something the City would absolutely want. Other property owners have stated the losses could be in the hundreds of millions of dollars. How much will the City have to pay for the taking of private property for a public purpose? How much will the City lose in tax revenue? These are among the many questions that should be considered along with the benefits to the environment and public amenities provided by the proposed SMP.

Sincerely,

CURRAN LAW FIRM P.S.

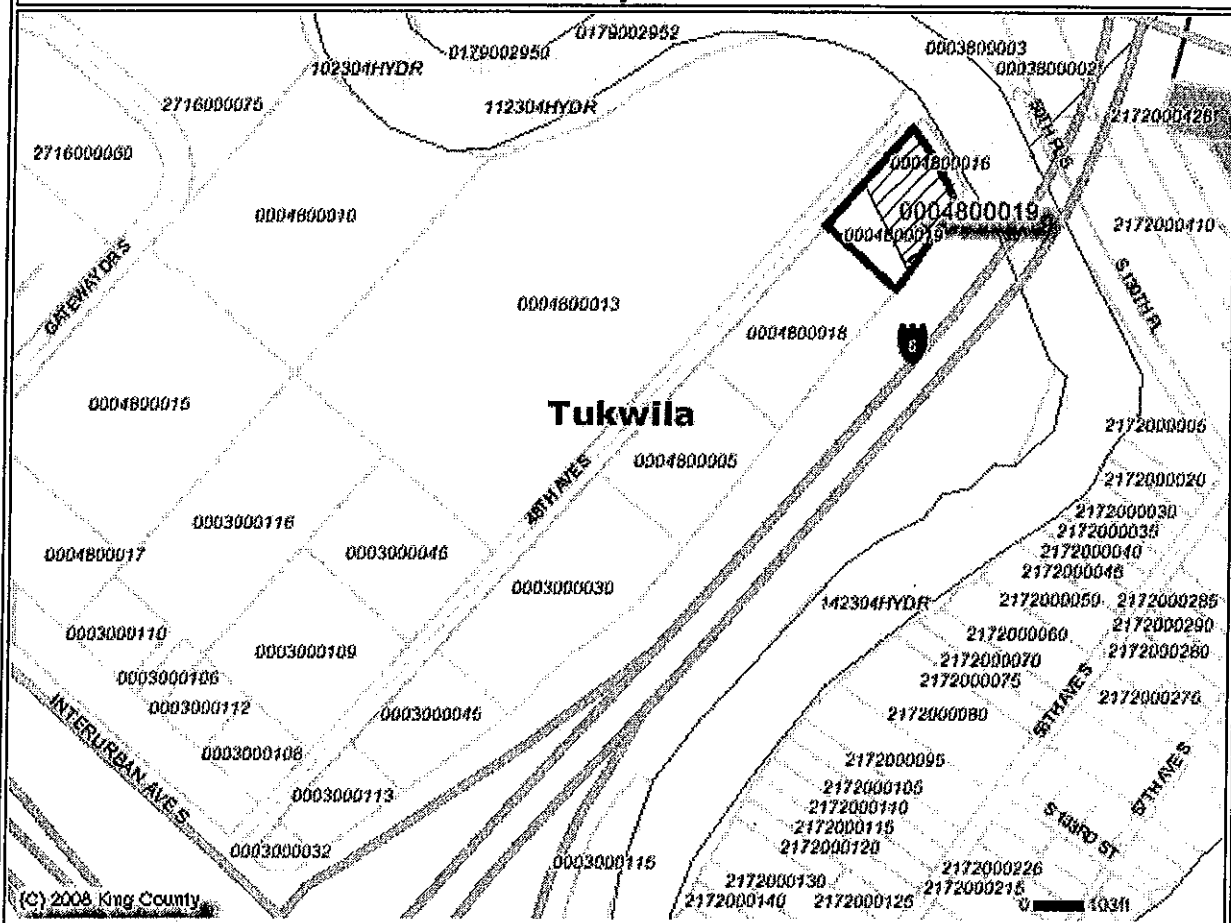


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cc: Staff of the Department of Community Development
Louise H. Strander
John C. Strander



Parcel Map and Data



Parcel Number 0004800019

Address**Zipcode**

Taxpayer

STRANDER LOUISE M

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Attachment G Planning Commission Action

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION APPROVED THE STAFF RECOMMENDED REVISIONS TO SECTION 14.5 AND CHANGED SECTION 14.5 B.4 TO REQUIRE APPROVAL OF AN EXTENSION BY THE CITY COUNCIL.

NONCONFORMING USES, STRUCTURES, PARKING LOTS AND LANDSCAPE AREAS

In order to address comments about treatment of non-conformities created by the new SMP development standards, staff proposes to add a new nonconforming section specific to shorelines rather than referencing the existing Zoning Code standards. Section 14.5 is proposed to be revised as follows:

Page 119:

14.5 Nonconforming Development

~~A. A nonconforming use or development is a shoreline use or development that was lawfully constructed or established prior to the effective date of the SMP but that does not conform to present regulations or standards of the program.~~

~~B. The provisions of TMC 18.70, Nonconforming Lots, Structures and Uses shall apply to the shoreline jurisdiction.~~

A. Nonconforming Uses

Any preexisting lawful use of land made nonconforming under the terms of this SMP may be continued as a nonconforming use, defined in TMC Chapter 18.06, or as hereafter amended, so long as that use remains lawful, subject to the following:

1. No such nonconforming use shall be enlarged, intensified, increased or extended to occupy a greater use of the land, structure or combination of the two, than was occupied at the effective date of adoption of this SMP;
2. No nonconforming use shall be moved or extended in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this SMP;
3. If any such nonconforming use ceases for any reason for a period of more than for 24 consecutive months, six consecutive months, or a total of 365 days in a three year time period, whichever occurs first, any subsequent use shall conform to the regulations specified by this SMP for the shoreline environment in which such use is located. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council Director may grant an extension of time of up to 12 months beyond the 24 consecutive months. The City Council Director shall consider special circumstances and economics impacting the use;
4. No existing structure devoted to a use not permitted by this title in the zone in which it is located shall be substantially improved as defined by the Washington State Building Code, except in changing the use of the structure to a use permitted in the zone in which it is located. If any building is devoted in whole or in part to any nonconforming use as allowed under the specific shoreline environment, work may be done in any period of twelve consecutive months on ordinary maintenance and repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the current replacement value

Attachment G Planning Commission Action

5. If a change of use is proposed to a use determined to be nonconforming by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP or a use approved under a Conditional Use or Unclassified Use Permit process. For purposes of implementing this section, a change of use constitutes a change from one Permitted, Conditional or Unclassified Use category to another such use category as listed within the zoning code.

B. Nonconforming Structures

Where a lawful structure exists at the effective date of adoption of the SMP that could not be built under the terms of the SMP by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued so long as the structure remains otherwise lawful subject to the following provisions:

1. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or impacts the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a nonconforming structure is permitted, including but not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
2. Should such structure be destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP.
3. Should such structure be moved for any reason or any distance whatsoever, it shall thereafter conform to the regulations of this SMP after it is moved.
4. When a nonconforming structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council Director may grant an extension of time of up to 12 months beyond the 24 consecutive months. The City Council Director shall consider special circumstances and economic impacting the sale or lease of said structure.
5. Residential structures and uses located in any single-family or multiple-family residential zoning district and in existence at the time of adoption of this SMP shall not be deemed nonconforming in terms of height, use, or location provisions of this title. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be changed except as provided in the non-conforming uses section of this chapter.
6. Single-family structures in single- or multiple family residential zone districts, which have legally nonconforming setbacks from the OHWM per the SMP buffer, shall be allowed to expand the ground floor only along the existing building line(s), so long as the existing distance from the nearest point of the structure to the OHWM is not reduced, and the square footage of new intrusion into the buffer does not exceed 50% of the square footage of the current intrusion.
7. Within the shoreline jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced, provided that:
 - a. The new construction is within the original dimensions and location on the lot;
 - b. The new construction does not further intrude into or adversely impact the required buffer;

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Shoreline restoration or ecological restoration: means the re-establishment or upgrading of impaired ecological shoreline processes functions or habitats, including any project approved by the Federal, State, King County, or City government or the WRIA 9 Steering Committee with the intent of providing habitat restoration and where the future use of the site is restricted through a deed restriction to prohibit non habitat uses.. This may be accomplished through measures including, but not limited to, re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions

Shoreline Significant Tree: means a single-trunked tree that is 4 inches or more in diameter at a height of 4 feet above the ground or a multi-trunked tree with a diameter of 2 inches or more (such as willows or vine maple).

Shoreline Stabilization: means actions taken to protect riverbanks or adjacent uplands from erosion resulting from the action of waves or river currents. "Hard" structural stabilization includes levees, bulkheads and revetments. "Soft" shoreline stabilization includes use of bioengineering measures where vegetation, logs, and/or certain types of rock is used to address erosion control and/or slope stability.

Shorelines: means the line at ordinary high water surrounding any body of water of 20 acres or larger or where the mean annual flow is 20 cubic feet per second or greater.

Significant vegetation removal: means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

Substantial development: means any development of which the total cost or fair market value exceeds five thousand dollars or as adjusted by the State to account for inflation, or any development which materially interferes with the normal public use of the water or shorelines of the state. The following shall not be considered substantial developments for the purpose of the Shoreline Management Act, but are not exempt from complying with the substantive requirements of this SMP:

1. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
2. Emergency construction necessary to protect property from damage by the elements;
3. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures

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including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

4. Construction or modification of navigational aids such as channel markers and anchor buoys;
5. Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;
6. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;
7. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;
8. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
9. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;
10. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - a. The activity does not interfere with the normal public use of the surface waters;
 - b. The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

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- c. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - e. The activity is not subject to the permit requirements of RCW 90.58.550 (Oil and Natural Gas exploration in marine waters);
11. The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.
12. Watershed restoration projects, which means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
- a. A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - c. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizen of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.
13. Watershed restoration plan, which means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area or watershed for which agency and public review has been conducted pursuant to the State Environmental Policy Act.
14. A public or private project that is designed to improve fish or wildlife habitat

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or fish passage, when all of the following apply:

- a. The project has been approved in writing by the department of fish and wildlife;
- b. The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and
- c. The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Additional criteria for determining eligibility of fish habitat projects are found in WAC 173-27-040 2 (p) and apply to this exemption.

Water-dependent: means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses include ship cargo terminal loading areas, marinas, ship building and dry docking, float plane facilities, sewer outfalls, and shoreline ecological restoration projects.

Water-enjoyment: means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use. The use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Examples of water-enjoyment uses include parks, piers, museums, restaurants, educational/scientific reserves, resorts and mixed use projects.

Water-oriented: means a use that is water-dependent, water-related or water-enjoyment or a combination of such uses.

Water-related: means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- a. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- b. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Examples of water-related uses are warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, log storage or oil refineries where transport is by tanker.

WRIA: means Water Resource Inventory Area – river basin planning and management areas formalized under Washington Administrative Code (WAC) 173-500-04 and authorized under the Water Resources Act of 1971, Revised Code of Washington (RCW) 90.54. WRIA 9 refers to the Green/Duwamish River Basin within which Tukwila is located.

July, 2008 Draft Shoreline Master Program

B. Shoreline Jurisdiction in Tukwila

The Green/Duwamish River is the only "shoreline of statewide significance" in the city (RCW 98.58.030). Throughout the SMP document, the term "Shoreline Jurisdiction" is used to describe the water and land areas subject to shoreline jurisdiction in Tukwila. Based on SMA guidelines for shoreline jurisdiction, Tukwila's Shoreline Jurisdiction is defined as follows:

The Tukwila Shoreline Jurisdiction includes the channel of the Green/Duwamish River, its banks, the upland area which extends from the ordinary high water mark landward for 200 feet on each side of the river and all associated wetlands within its floodplain.

The Tukwila SMP applies to all development activity occurring within the Shoreline Jurisdiction, which corresponds to the Shoreline Overlay District as established by Chapter 18.44 of the Tukwila Municipal Code.

The use of the ordinary high water mark, or OHWM, represents a change from the previous Master Program, which used the mean-high-water mark (MHWM). The MHWM is the elevation of the surface of Green River and Duwamish River waters when the discharge rate at the U.S. Geological survey Stream Gauging Station near Auburn is 9,000 cfs. Locating the MHWM requires the skills of a surveyor. The OHWM is used to define the usual height of water, as evidenced by soil and vegetation conditions. It may be visually located based on the line between flood-tolerant and non-flood-tolerant vegetation along the riverbank. Due to the relative ease of locating the OHWM, this measure is preferred and therefore implemented in this SMP. The Shoreline Management Act also requires the use of the OHWM as the means by which location of the shoreline environment is determined.

All proposed uses and activities under its jurisdiction must be reviewed for compliance with the goals, policies and regulations herein. All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this Master Program whether or not a permit is required.

This Master Program includes the two proposed annexation areas indicated in the Comprehensive Plan (Map 1). The north annexation area is located between the Green/Duwamish River on the east, Military Road to the west, and from S. 128th Street north to S. 96th Street. The south annexation area is located between I-5 and the Green River, south of the City limits to S. 204th Street. Adoption of shoreline policies and environment designations for newly annexed areas would require an amendment to the Shoreline Master Program. To avoid having to amend the SMP later, these potential annexation areas are considered here and the environmental designations and regulations will apply upon annexation.

Attachment C-1
Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISIONS.

APPLICABILITY OF SHORELINE DEVELOPMENT STANDARDS

Staff proposes to delete the list of general triggers for compliance with the development standards and instead rely on the definition of development as found in the Shoreline Management Act.. The following revisions are proposed to Section 9.1:

Page 60:

9.1 Applicability

Except as provided below for nonconforming uses, structures, parking lots and landscape areas, The following development standards of this chapter apply to substantial development work that meets the definition of development whether or not a shoreline substantial development permit is required:-

- New construction
- Expansion of existing structures
- Any exterior alteration of a structure where the costs stated on all submitted building permit applications for the structure within any 3 year period equals or exceeds 10 % of the building's assessed value.
- Change in building occupancy
- Site modifications, such as, but not limited to land alteration, paving, and riverbank modifications

Nonconforming uses, and structures, parking lots and landscape areas -will be governed by the standards in Section 14.5TMC-18.70, Nonconforming Development Lots, Structures and Uses.

When a parcel located within the Shoreline Jurisdiction (a "jurisdictional parcel") is used in conjunction with a separate adjoining parcel that lies entirely outside the Shoreline Jurisdiction (a "nonjurisdictional parcel"), development of the nonjurisdictional parcel shall not cause the nonjurisdictional parcel to be subject to this SMP, nor shall development of the nonjurisdictional parcel cause any development standards of this SMP to be required to be implemented on the jurisdictional parcel.

Attachment G Planning Commission Action

- c. The new construction does not threaten the public health, safety or welfare; and
 - d. The structure otherwise meets the requirements of the SMP.
8. A nonconforming use, within a nonconforming structure, shall not be allowed to expand into any other portion of the nonconforming structure.

C. Building Safety

- 1. Nothing in this SMP shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by order of any City official charged with protecting the public safety.
- 2. Alterations or expansion of a nonconforming use which are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed.

D. Nonconforming Parking Lots

- 1. Nothing contained in this SMP shall be construed to require a change in any aspect of a structure or facility covered thereunder including, without limitation, parking lot layout, loading space requirements and curb-cuts, for any structure or facility which existed on the date of adoption of this SMP.
- 2. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment less than 100%, the requirements of the SMP shall be complied with for the additional parking area.
- 3. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment greater than 100%, the requirements of the SMP shall be complied with for the entire parking area.

E. Nonconforming Landscape Areas

- 1. Adoption of the vegetation protection and landscaping regulations contained in this SMP shall not be construed to require a change in the landscape improvements for any legal landscape area which existed on the date of adoption of this SMP, unless and until the property is redeveloped or alteration of the existing structure beyond the thresholds provided herein.
- 2. At such time as the property is redeveloped or the existing structure is altered beyond the thresholds provided herein and the associated premises does not comply with the vegetation protection and landscaping requirements of this SMP, a landscape plan which conforms to the requirements of this SMP shall be submitted to the Director for approval.

F. Adjoining Parcels Outside the Shoreline Jurisdiction

When a parcel located within the Shoreline Jurisdiction has a nonconforming use, structure, parking lot or landscape area as defined in this SMP (a "nonconforming parcel") and that nonconforming parcel is used in conjunction with a separate adjoining parcel that lies entirely outside the Shoreline Jurisdiction (a "nonjurisdictional parcel"), activity on the nonjurisdictional parcel shall not be used to determine compliance with this Section 14.5 of this SMP by the nonconforming parcel.

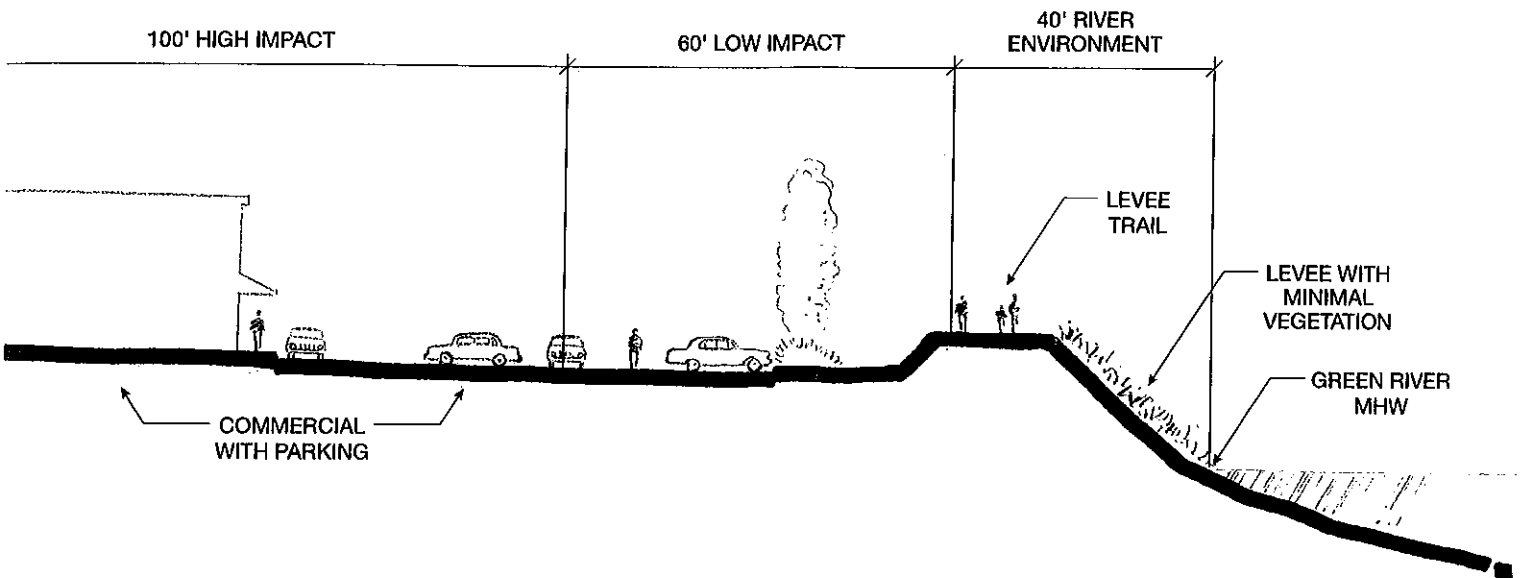
RESPONSE TO PUBLIC COMMENTS REGARDING BUFFERS

Specific Buffer Issues Raised	Staff Response
Variable buffer widths, site by site establishment of buffers. Recommend buffer widths instead of requiring them.	<p>Staff is proposing some changes to address the concerns raised about buffer widths while working within the following constraints:</p> <ol style="list-style-type: none"> 1. Site by site establishment of buffers was previously identified as a concern by the Department of Ecology in response to the staff draft which proposed buffers that resulted from re-sloping the bank to a 2.5:1 slope plus 20 feet at the top of bank, without specifying a starting buffer width or a minimum buffer width. This approach was discouraged by Ecology as it does not provide certainty on the size of the buffer width. Staff believes that the approach shown in Attachment A will address Ecology's concerns by establishing a specific buffer width, while allowing for site by site reductions when the river bank is re-sloped or the levee is laid back. 2. From an administrative point of view, site by site buffer determinations or recommended buffer widths, as opposed to required buffers would require development of strict criteria and would likely be very difficult to administer. There could also be perceived issues of unfairness between different properties involved in determining buffers. Per Attachment A, staff has instead recommended criteria for buffer reductions tailored to the specific conditions found along different sections of the river. The application of these criteria would result in buffer widths that respond to the specific characteristics of each site. 3. Site by site determinations, rather than the groupings of like areas suggested in Attachment A, do not take into account the generally homogeneous characteristics of the river. The Inventory and Characterization Report, as summarized in Section 7.2 of the Draft SMP indicated as a key finding that "...at an ecosystem scale, the habitat is largely homogenous throughout the city. With the exception of the functions provided by the transitional mixing zone from salt to fresh water, habitat conditions and functions are relatively similar throughout the shoreline."

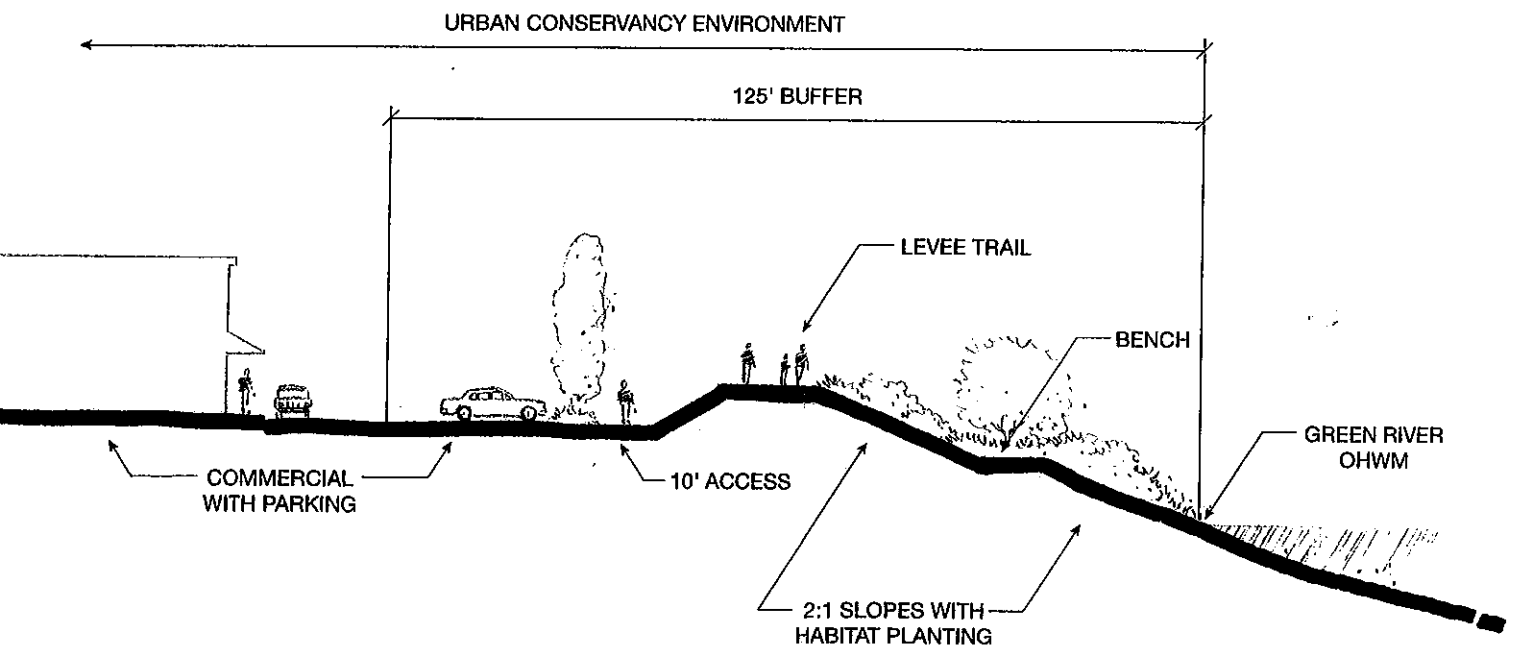
Attachment B

Specific Buffer Issues Raised	Staff Response
Allow buffer reductions for shoreline as allowed in the SAO	<p>The City's SAO allows buffer reductions of up to 50% under certain criteria and only if buffer enhancement is carried out in accordance with an approved plan. Buffer reductions are already allowed in the draft SMP on a case-by-case basis in the Urban Conservancy and High Intensity Environments, provided they do not cause a net loss of shoreline ecological function and that shoreline functions are improved by modifying the banks to a more stable slope and planted as explained in Attachment A. Buffer reduction without enhancement would not meet the criterion utilized for establishing buffer widths – keeping new structures far enough away from the river's edge to prevent property damage due to high flows that cause scouring, erosion, and bank de-stabilization.</p> <p>No buffer reductions would be allowed in the Shoreline Residential Environment because the buffer is already reduced from 100 feet.</p>
Possibility of buffer averaging	<p>Buffer averaging might not provide the minimum functions needed to protect the shoreline. In addition, buffer averaging also would not meet the other important criterion utilized for establishing buffer widths – keeping new structures far enough away from the river's edge to prevent property damage due to high river flows that cause scouring, erosion, and bank de-stabilization.</p>
100-125 ft buffer not appropriate (too large) for commercial/industrial areas. Sensitive Areas BAS not applicable to river, need to take into account commercial/industrial characteristics of shoreline as well as levees	<p>Staff did take into account existing land use in establishing the proposed buffers, the SAO standards for Type 2 watercourses were used only as a starting point, given that buffer functions are similar for the Green/Duwamish as they are for streams. It should be noted that the Washington Department of Fish and Wildlife recommends buffers of 150 feet for rivers of the state. Staff determined that 150 foot buffers would not be practical given the existing developed character in the shoreline. The other factor in establishing buffer width, as noted in other responses was the protection of structures from bank failures, the need to reslope over-steepened, non-levee river banks and the need to allow for reconstructing levees to a stable long-term profile. This last factor was the overriding one in establishing the 125 foot buffer for levee areas.</p>

Existing Conditions "Urban Environment"



SMP Proposal "Urban Conservancy Environment"



ECONOMIC DEVELOPMENT

PURPOSE

The overriding goal of this element is the enhancement of the community's economic well-being. In a series of policy recommendations, it identifies means of stimulating economic improvement for business and the community as a whole. It lays out a direction and strategies for dealing with economic variables and adjusting to economic forces that cannot be predicted or controlled. It is a key to the integration of all elements of the Comprehensive Plan, suggesting ways in which the City, as well as others, can use economic strategies in order to achieve the goals of the Plan.

There are two primary ways in which local economic activity can be affected:

- Land use and utility planning that determine, within the local infrastructure, the space available for residential and nonresidential development
- Directly or indirectly influencing private-sector decisions as to location, operation, and development of business real estate

The Economic Development Element presents a focused approach to enhancing our city's economic well-being. This approach can be summarized as follows:

General Philosophy

- Sustain moderate growth
- Target high salary industries
- Provide capacity for meeting Tukwila's employment targets as set by the Countywide Planning Policies
- Ensure quality growth and land use by effective code enforcement and regulations
- Encourage growth into certain areas through the use of zoning and developmental regulations
- Encourage the retention and growth of existing local firms
- Provide efficient and timely administration of City services

Activity Emphasis

- Respond to specific requests for assistance from local firms
- Emphasize business development for existing businesses to expand
- Maintain public works and utilities so that existing systems are not over-utilized
- Utilize prompt and firm code enforcement to negate impact of code violations on surrounding areas.

Potential Tools

- Industrial revenue bonds for certain areas
- Tax-increment financing for specific areas
- Targeted government and private resources
- Targeted local, state, and federal funds
- Use of infrastructure investment to attract new firms and development to designated areas
- Funded, staffed and administered code enforcement.

In this way, local government can play an important role in the economic development of the community. The policies developed in this element are aimed at implementing that role.

The Economic Setting

The following statistics may be useful in setting the background for the economic development policies. In 1992, the population of Tukwila was 16,667; estimated 2003 population was 17,270. During the same period, taxes collected rose from \$19.6 million to \$28.2 million, and the assessed valuation of the City grew from \$2.542 billion to \$3.340 billion. In 1992, there were a total of 7,320 single- and multiple-family dwellings in the City; in 2002 there were 7,628.

In 2000, the median age of Tukwila residents was 33.4 years; nearly eight percent of all citizens were older than 65; and 24 percent of the residents were under 18. In 2000, residents of color were 44 percent of the population. Median household income was \$40,700, which is less than the King County median of \$53,200.

In 2000, Tukwila had nearly three times as many jobs as it had residents. There were over 2,000 licensed businesses of all types in Tukwila, employing

approximately 48,000 people. In 2002, King County's Annual Growth Report showed that manufacturing accounted for 28 percent of these jobs, down from 56 percent in 1991. This reflected the diminished presence of Boeing and other manufacturing firms in the City's light and heavy industrial areas. Wholesale and retail sales provided 38 percent of jobs, with services and government employment representing about 30 percent of the work force. Other sectors provide the remaining employment opportunities.

The City remains a strong attractor of consumer spending, with 5.4 percent of all of King County's retail sales.

ISSUES

The current and existing economic trends provide a variety of complex issues for economic development in the City of Tukwila:

- To access the regional highway, transit and air transportation system in a way that does not handicap local property development and redevelopment efforts
- To establish a coordinated transit hub in the Tukwila Urban Center that efficiently mixes modes of travel and stimulates development of real estate associated with transportation facilities
- To continue the strength and growth of the tax base
- To determine ways to redevelop commercial and residential areas in the SR-99 corridor
- To foster environmental remediation, land conversion and redevelopment in the MIC and Interurban Avenue areas
- To increase development, intensity, and diversity of uses in the Tukwila Urban Center
- To form policies, programs, projects and plans that benefit from the diverse groups within the residential and business community
- To form an organizational entity or linkage to accomplish an effective public-private partnership
- To gain regional recognition commensurate with Tukwila's economic importance, not population size
- To maintain favorable tax base to support daytime and nighttime population
- To meet the needs of our residential neighborhoods while maintaining the economic health of our business community

- To fund infrastructure and services is dependent on maintaining a solvent revenue stream, particularly sales tax. A potential change in the sales sourcing rules is projected to reduce Tukwila sales tax revenue by \$2.6 million per year. This would directly affect Tukwila's ability to adequately fund capital infrastructure and services.

GOAL AND POLICIES

Goal 2.1

Continuing enhancement of the community's economic well-being.

Policies

- 2.1.1 *Develop the tools needed to improve the economic development climate.*
- 2.1.2 *Monitor City actions and impacts on the local economy and review economic development incentives.*
- 2.1.3 *Identify a single contact point and information source for the business community.*
- 2.1.4 *Budget for public infrastructure (for example, roads, sewers, curbs, lighting, parks, open space). Use some capital improvement funds to encourage in-fill, land assembly, redevelopment, and land conversion for family-wage jobs, but only if concurrent with substantial private actions.*
- 2.1.5 *Act in partnership with the private sector to fund infrastructure as part of a sub-area plan to encourage redevelopment and as an inducement to convert outdated and underutilized land and buildings to high-valued and/or appropriate land uses.*
- 2.1.6 *Consider nonfinancial ways (such as brokering and interlocal agreements) to assist industrial land owners with state and federal government environmental remediation actions.*
- 2.1.7 *Maintain a high degree of efficiency and certainty in permit and regulatory processes to enhance our businesses' competitive position.*